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Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories

Applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and the other occupied Arab territories

Report of the Secretary-General

Summary

The present report is submitted pursuant to General Assembly resolution 70/88 on the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and the other occupied Arab territories.

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1. The present report is submitted pursuant to General Assembly resolution 70/88, the operative part of which reads as follows:

> "*The General Assembly*,
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> "...
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> "1. *Reaffirms* that the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, is applicable to the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967;
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> "2. *Demands* that Israel accept the de jure applicability of the Convention in the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967, and that it comply scrupulously with the provisions of the Convention;
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> "3. *Calls upon* all High Contracting Parties to the Convention, in accordance with article 1 common to the four Geneva Conventions and as mentioned in the advisory opinion of the International Court of Justice of 9 July 2004, to continue to exert all efforts to ensure respect for its provisions by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967;
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> "4. *Notes* the reconvening by Switzerland, the depositary State, of the Conference of High Contracting Parties to the Fourth Geneva Convention on 17 December 2014, and calls for efforts to uphold the obligations reaffirmed in the declarations adopted on 5 December 2001 and on 17 December 2014;
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> "5. *Welcomes* initiatives by States parties, in accordance with article 1 of the Convention, aimed at ensuring respect for the Convention;
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> "6. *Reiterates* the need for speedy implementation of the relevant recommendations contained in the resolutions adopted by the General Assembly, including at its tenth emergency special session and including resolution ES-10/15, with regard to ensuring respect by Israel, the occupying Power, for the provisions of the Convention;
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> "7. *Requests* the Secretary-General to report to the General Assembly at its seventy-first session on the implementation of the present resolution."

2. On 20 April 2016, the Secretary-General addressed a note verbale to the Government of Israel, in which he requested, in view of his reporting responsibilities under resolution 70/88, that the Government inform him of any steps that it had taken, or envisaged taking, concerning the implementation of the relevant provisions of that resolution.

3. No reply had been received from Israel at the time of the preparation of the present report.

4. By a note verbale, dated 20 April 2016, sent to all permanent missions of all the High Contracting Parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, including the State of Palestine, the Secretary-General drew attention to paragraph 3 of resolution 70/88. The Secretary-General requested, in view of his reporting obligations under that resolution, information

regarding any steps that the High Contracting Parties had taken, or envisaged taking, concerning its implementation.

5. Four replies to the note verbale had been received at the time of the preparation of this report.

6. On 17 May 2016, the Permanent Mission of Brazil to the United Nations in Geneva responded to the note verbale. Brazil noted that it had adopted an unequivocal position at the multilateral level in recalling Israel's international obligations as an occupying Power, in accordance with the Fourth Geneva Convention. It noted that Brazil had continuously emphasized, in the appropriate forums, the illegality of the occupation, and it recalled the international humanitarian law and human rights obligations of Israel arising therefrom, with the aim of ensuring respect by Israel of applicable international law provisions.

7. Brazil condemned the expansion of Israeli settlements in the Occupied Palestinian Territory as a violation of article 49 of the Fourth Geneva Convention, according to which the occupying Power is prohibited from deporting or transferring parts of its own civilian population into territory it occupies.

8. Furthermore, Brazil condemned the withholding of Palestinian customs duties by Israel at a time when the State of Palestine sought to integrate itself into the international community. Brazil noted that such actions not only disregarded the Paris Protocol on the matter, but could also be considered a collective punishment which constituted a grave violation of the Fourth Geneva Convention.

9. Brazil noted that the Brazilian legislative decree, by which the free trade agreement between Brazil and Israel was approved, determined that the Government should negotiate the exclusion, from the agreement's coverage, of goods whose certificates of origin attest as their origin areas under the Israeli administration from 1967 onwards. Brazil emphasized that that measure was crucial for the normative differentiation between Israeli activities within the Green Line and activities outside that area, the latter activities being illegal under international law. Brazil noted that the matter was currently on the agenda of the joint committee that oversaw the implementation of the agreement.

10. Furthermore, Brazil stated that a preliminary note, which had been included in the manual on exports to Israel elaborated by its Ministry of Foreign Affairs, discouraged financial and commercial transactions, and investments, or any other activities relating to the Israeli settlements in the Occupied Palestinian Territory. Brazil mentioned that the note clarified that the construction of settlements was illegal under international law, and was in violation of the Fourth Geneva Convention and several other United Nations resolutions, including Security Council resolution 242 (1967). Brazil highlighted that the manual also defined the Occupied Palestinian Territory and noted that, under international law, the Occupied Palestinian Territory was not part of Israeli territory nor was it under dispute.

11. Brazil noted that an agreement between the Institute of Mathematics and Statistics of the University of São Paulo and a higher education institution, located in the Israeli settlement of Ariel, within the Occupied Palestinian Territory, had not been renewed, as the existence of such an institution was a result of a violation of international law.

12. On 28 April 2016, the Permanent Mission of Cuba to the United Nations replied to the note verbale. Cuba noted that it fully supported General Assembly resolution 70/88 and reiterated its call for prompt and immediate application of the resolution by all Member States.

13. Cuba noted that despite multiple calls from the international community to Israel to end the violence and all illegal settlement activities, and to halt and reverse the construction of the wall, among other illegal policies and practices, Israel had continued to colonize the Occupied Palestinian Territory, including East Jerusalem; to displace Palestinian civilians; to impose collective punishment; and to violate international law, including international humanitarian law.

14. Cuba noted the continued raids by the Israeli army into the Occupied Palestinian Territory, emphasizing that the raids perpetuated the violent and destructive nature of the occupation. Cuba emphasized the situation of thousands of Palestinian prisoners being held in Israeli jails who were suffering from constant violations of their human rights, such as abuse, torture and humiliation, which also constituted violations of international humanitarian law.

15. Cuba, as a High Contracting Party to the Fourth Geneva Convention, reaffirmed the full and absolute applicability of the Convention to the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967.

16. Cuba also noted that Palestinian civilians had the right to be protected under international humanitarian law and that Israel, as an occupying Power, was obligated to guarantee Palestinians the full exercise of this right.

17. Cuba reiterated its call to the occupying Power to immediately cease all violations of international law, including international humanitarian law, and to fully abide by its legal obligations, including under the framework of the Fourth Geneva Convention. Cuba recalled that article 1, common to the four Geneva Conventions, provided that the High Contracting Parties had committed to respecting and enforcing the Conventions in all circumstances.

18. Cuba noted that the Fourth Geneva Convention protected the civilian population in the Occupied Palestinian Territory against abuses committed by the occupying Power. It noted that the Convention required the occupying Power to not discriminate against the civilian population; to protect civilians against all forms of violence; and to the extent possible, to ensure that civilians had access to a normal life in accordance with their laws, culture and traditions. Cuba argued that despite those requirements, Israel had continued to violate the provisions of the Convention.

19. Cuba condemned the prolonged and illegal occupation of the Occupied Palestinian Territory, and the continued military campaign against Palestinians, in particular in the Gaza Strip. Cuba asserted that through the military campaign, the occupying Power had continued to perpetrate grave violations of human rights and war crimes, including the excessive and indiscriminate use of force, including against children, and had caused the vast destruction of properties, infrastructure and agricultural land.

20. Cuba urged that the forced and arbitrary detention and imprisonment of thousands of Palestinian civilians, including hundreds of women and children, and

the ill-treatment of prisoners in Israeli prisons should cease immediately. Furthermore, it demanded that the detainees and prisoners be released.

21. Cuba stated that Israel had refused to accept the applicability of the Convention in the Occupied Palestinian Territory, including East Jerusalem, and by doing so, had declined to conform to the will of the international community, which had confirmed the applicability of the Convention in the Occupied Palestinian Territory, including East Jerusalem, for over 40 years. Cuba stated that the impunity with which the occupying Power had acted for many years was due, inter alia, to the inaction of the Security Council. Cuba argued that the Security Council had been marred by double standards and a lack of transparency, in particular by one of its permanent members, and called for these practices to cease.

22. Cuba reaffirmed its determination to continue supporting the legitimate struggle of the Palestinian people for justice, dignity, peace and their inalienable right to self-determination and sovereignty in an independent State of Palestine with pre-1967 borders, with East Jerusalem as its capital.

23. On 18 May 2016, the Permanent Mission of the Syrian Arab Republic to the United Nations responded to the note verbale, expressing its support for General Assembly resolution 70/88, and repeating its call to all Member States to accelerate the strict implementation of the resolution. The Syrian Arab Republic renewed its reaffirmation that the Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949) applied to the Occupied Palestinian Territory, including East Jerusalem, and the other Arab territories occupied by Israel since 1967.

24. The Syrian Arab Republic reaffirmed that Israel's refusal of the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967 was a refusal to comply with the will of the international community which had determined the applicability of the Convention to the territories. The Syrian Arab Republic reaffirmed the need to put an end to the continued Israeli violations of its obligations according to international law.

25. The Syrian Arab Republic emphasized that, despite the passage of 49 years since the Israeli occupation of the Syrian Golan, and repeated demands in the form of resolutions and the legitimate will of the international community that Israel end the occupation of the Syrian Golan and stop its daily oppressive practices against Syrian citizens under occupation and, its flagrant violations of all agreements and international standards, Israel had still not complied with international resolutions and international law. Furthermore, the Syrian Arab Republic noted that Israel had continued its occupation of the Syrian Golan without any deterrent and had benefitted from protection from accountability provided by some permanent members of the Security Council.

26. The Syrian Arab Republic condemned in the harshest words the meeting that the Government of Israel, the occupying Power, had conducted in the occupied Syrian Golan on 17 April 2016. In identical letters addressed to the Secretary-General and the President of the Security Council (S/2016/354), the Syrian Arab Republic had requested that the United Nations and the Security Council immediately condemn the meeting held on occupied Syrian land and that such

irresponsible action not be repeated. In this regard, the Syrian Arab Republic noted that an announcement had been made by the Coordinating Bureau of the Non-Aligned Movement in New York, dated 22 April 2016, whereby the Non-Aligned Movement had condemned the Government of Israel for having conducted the meeting in the occupied Syrian Golan, stating further that the Non-Aligned Movement had considered decisions and announcements made during the meeting to be invalid and of no legal consequence. The Syrian Arab Republic also stated that the Non-Aligned Movement had requested Israel to implement Security Council resolution 497 (1981), according to which the Council had decided that the Israeli decision to annex the Syrian Golan was null and void. The Syrian Arab Republic reaffirmed the need for the United Nations to take decisive steps to force Israel to end its occupation of the Syrian Golan and to make Israel understand that there was no escape from implementing United Nations resolutions that called for Israel to withdraw to the borders of 4 June 1967.

27. Furthermore, the Syrian Arab Republic affirmed its rejection of Israeli settlement policies in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan. It rejected any other party's attempt to consider the settlements as a fait accompli and to promote their acceptance as such since the settlements represented a flagrant violation of international law and of the relevant legitimate will of the international community as reflected in a number of resolutions. The Syrian Arab Republic demanded that pressure be exerted on Israel to respect international resolutions and agreements, and for illegal settlements to be dismantled.

28. The Syrian Arab Republic emphasized that, despite the advisory opinion of the International Court of Justice affirming that countries were obliged not to recognize the legal status resulting from the construction of the wall in the Occupied Palestinian Territory, including East Jerusalem, and the surrounding areas, and the relevant United Nations resolutions supporting that opinion, Israel had continued to build the wall around the city of Jerusalem as part of its systematic policy to deny the Palestinian people their right to self-determination. The Syrian Arab Republic noted that that emphasized the need to focus on the strategy to Judaize the city of Jerusalem through policies including the continuous and dangerous aggressions by Israel against the city and its Islamic and Christian holy sites; the increased rate of settlement activity in the Old City and the city as a whole, and the surrounding area in order "to impose a settlement and colonial reality on the land in completion of the plan to 'judaize' the city and encircle it with the apartheid separation wall"; and to confront Israeli efforts to tear apart families in Jerusalem and expel residents of Jerusalem.

29. The Syrian Arab Republic noted that Israel's continued violation of the inalienable right to self-determination of the Palestinian people represented a violation of a right to which all are entitled. The Syrian Arab Republic stated that, as a result, the international community was obliged to require Israel to realize that right, as confirmed by the International Court of Justice in its advisory opinion regarding the wall.

30. The Syrian Arab Republic also noted that the international community bore the responsibility of putting pressure on Israel in ending the occupation of the Palestinian territory occupied since 1967 and other Arab occupied territories

including the occupied Syrian Golan; to assist the Palestinian people in establishing their independent State, with East Jerusalem as its capital; and to enable the Palestinian people to have control over their natural resources.

31. The Syrian Arab Republic called upon the international community to take an immediate and firm stand to stop the series of executions by Israel in the Occupied Palestinian Territory of Palestinians who confronted Israeli aggression and its "terrorist practices", such as killings; the demolition of homes; the violation of the sanctuary of the Al-Aqsa mosque and all Muslim and Christian holy places; and the continuing efforts to Judaize the city of Jerusalem.

32. The Syrian Arab Republic requested the international community to oblige Israel to implement the relevant United Nations resolutions that demanded Israeli withdrawal from occupied Arab lands in the Occupied Palestinian Territory and the Syrian Golan to the borders of 4 June 1967, and from the remaining occupied Lebanese land; the establishment of an independent Palestinian State with East Jerusalem as its capital; and the release of Palestinian and Arab Syrian prisoners from Israeli jails. The Syrian Arab Republic also called for the implementation of the right of return of the Palestinian refugees expelled in 1948 from their homes by force.

33. On 15 May 2016, the Permanent Observer Mission of the State of Palestine to the United Nations responded to the note verbale and described the following steps taken in relation to the implementation of resolution 70/88.

34. The State of Palestine noted the issuance of a presidential decree on the establishment of an independent Palestinian national committee for international humanitarian law in 2016. The State of Palestine noted that the decree was in accordance with the State's obligations as a State party to all four Geneva Conventions, and that it would assist in fulfilling its commitments towards international humanitarian law at the national and international levels. Furthermore, the State of Palestine noted that the Palestinian national committee for international humanitarian law was headed by the Ministry of Foreign Affairs, with the Palestine Red Crescent Society serving as a secretariat, with membership including official institutions, civil society, academics and experts, in coordination with the International Committee of the Red Cross. The State of Palestine stated that that step was essential to promoting respect for international humanitarian law and to enhancing its implementation in coordination and collaboration with the concerned national, regional and international bodies. The State of Palestine also asserted that that step would assist in protecting civilian persons who were not participating in armed conflict and in protecting civilian property.

35. The State of Palestine then noted that, according to the decree, the objectives and functions of the Palestinian national committee for international humanitarian law were provided for as follows:

(a) To increase the understanding of international humanitarian law principles within the Palestinian population;

(b) To provide optimum employment of international humanitarian law, in order to counter and put an end to international humanitarian law violations owing to the Israeli occupation, in particular grave breaches of the Geneva Conventions

and of Additional Protocol I, and for other serious violations of international humanitarian law;

(c) To monitor and document violations of international humanitarian law and offer recommendations with the necessary steps to counter them;

(d) To review and evaluate existing national legislation, judicial decisions and administrative provisions in line with the obligations stemming from the 1949 Geneva Conventions and its additional protocols;

(e) To harmonize national legislation, regulations and practices with the international instruments of humanitarian law;

(f) To coordinate with other international humanitarian law national committees and to participate in related regional and international conferences;

(g) To submit proposals to the competent authorities on the necessary applicable measures pursuant to the provisions of international humanitarian law;

(h) To work with the competent authorities to ensure the protection of and respect for the emblems of the Red Cross and Red Crescent Movement, including the red crystal, and other protected signs and signals in coordination with the Palestine Red Crescent Society and other relevant official bodies;

(i) To raise the level of expertise and national capacities, and overcome obstacles that restrict its implementation.

36. The State of Palestine also noted that the Government had issued the emblem law by a decree bylaw in January 2016, in order to achieve the following objectives:

(a) To provide a guideline for national regulations on the use of the emblem;

(b) To prevent all forms of emblem abuse/misuse;

(c) To enhance the protection of persons and objects entitled to use the distinctive emblems within its national laws;

(d) To adopt measures to prevent the misuse of the red cross, the red crescent, the red crystal and other emblems and signs provided for in international humanitarian law;

Therefore, this legislation will rely on the implementation of the Fourth Geneva Convention in relation to the protection of civilian persons in time of war, as well as its additional protocols.

37. The State of Palestine noted that it had sent instructors and directives to its security services to observe and ensure observance of the Geneva Conventions.

38. The State of Palestine noted that, as a High Contracting Party to the Geneva Conventions, the State was studying and positively considering the recognition of the competence of the International Humanitarian Fact-Finding Commission, in particular after its accession to the Geneva Conventions of 1949 and Additional Protocols (article 90 of Additional Protocol I of 8 June 1977). According to the State of Palestine, that inquiry mechanism would investigate any allegations of grave breaches as defined in the Conventions and Additional Protocol I, or other serious violations of the aforementioned conventions.

39. The State of Palestine noted that it had ratified the Rome Statute and had subsequently lodged a declaration under article 12 (3), starting correspondence with the International Criminal Court to investigate crimes committed since 13 June 2014, including crimes committed against civilians during hostilities. The State of Palestine also noted that based on that declaration, the International Criminal Court prosecutor had opened a preliminary examination into the situation in the Occupied Palestinian Territory, with which the State of Palestine stated it was fully cooperating.

40. Furthermore, the State of Palestine referred to the existence of a draft law of the most serious crimes of concern to the international community within the jurisdiction of the International Criminal Court. The State of Palestine noted the basic details of the draft law to be as follows:

- General principles: the law is aligned with the Rome Statute.
- Jurisdiction: the law has territorial and personal jurisdiction.
- Responsibility: individual and command responsibility.
- Court: a special court with levels of first instance, and appeal. Cassation will be through the regular Cassation court.

41. The State of Palestine noted that it had taken the initiative to pursue the adoption of several General Assembly resolutions calling on the depositary to convene High Contracting Party conferences on the implementation of the Fourth Geneva Convention in the Occupied Palestinian Territory, including East Jerusalem. The State of Palestine recalled that the High Contracting Parties had met three times (1999, 2001 and 2014) to discuss ways to uphold the Convention and to respect and ensure respect for its provisions, including third-party responsibility. Furthermore, the State of Palestine noted that it had sought to follow up on the declarations adopted by the High Contracting Parties in different avenues, including at the United Nations, and expressed its support for effective mechanisms to ensure compliance with the Conventions.